

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PADAM KUMAR KHANNA,

Plaintiff,

v.

JAGJIT SINGH RANDHAWA, ET AL.,

Defendants.

No. C 07-05136 CW

ORDER ADOPTING
MAGISTRATE JUDGE'S
REPORT AND
RECOMMENDATION RE:
PLAINTIFF'S MOTION
FOR ENTRY OF
DEFAULT, OVERRULING
PLAINTIFF'S
OBJECTIONS, DENYING
MOTION FOR DEFAULT
JUDGMENT AND
DISMISSING COMPLAINT
WITH LEAVE TO AMEND

On December 4, 2007, United States Magistrate Judge Edward M. Chen issued a report and recommendation denying the motions for default judgment of pro se Plaintiff Padam Kumar Khanna (Docket Nos. 4 and 5). On December 14, 2007, Plaintiff filed an objection to Judge Chen's report and recommendation and moved for the recusal of Judge Chen.

The Court has reviewed Plaintiff's objections and Judge Chen's report and recommendation and finds that Plaintiff's objections are without merit.

First, Plaintiff's request to recuse Judge Chen is not well-taken. "The standard for judging the appearance of partiality requiring recusal under 28 U.S.C. § 455 is an objective one and

1 involves ascertaining 'whether a reasonable person with knowledge
2 of all the facts would conclude that the judge's impartiality might
3 reasonably be questioned.'" Preston v. United States, 923 F.2d
4 731, 734 (9th Cir. 1991). Recusable bias must be both personal and
5 extrajudicial. United States v. Carignan, 600 F.2d 762, 763-64
6 (9th Cir. 1979). The source of bias must be extrajudicial because
7 the "recusal statute was never intended to enable a discontented
8 litigant to oust a judge because of adverse rulings made, for such
9 rulings are reviewable otherwise . . ." Ex parte American Steel
10 Barrel Co., 230 U.S. 35, 44 (1913). Plaintiff's charge that Judge
11 Chen is biased is based upon Judge Chen's actions in his role as
12 adjudicator of Plaintiff's case. Because the alleged bias does not
13 arise from an extrajudicial source, Plaintiff's request for recusal
14 must be DENIED.

15 Second, Plaintiff complains that Judge Chen only addresses
16 his claims of perjury against Defendants Jagjit Singh Randhawa and
17 Baljit Randhawa and does not address his conspiracy allegations
18 against them. However, in his report and recommendation, Judge
19 Chen noted that "the only cause of action explicitly stated against
20 the Randhawas was 'violation of 18 U.S.C. § 1621 -- Perjury.'"
21 Judge Chen acknowledged that Plaintiff implied, in his motion for
22 default judgment, that the Randhawas conspired with the State Bar
23 defendants to deprive him of his civil rights. However, Judge Chen
24 reiterated that, because a conspiracy claim was not formally plead
25 in the complaint, the perjury claim was the only one that was at
26 issue in the motion for default.

27 The Court finds Judge Chen's report and recommendation
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1 correct, well-reasoned and thorough and adopts it in every respect.
2 Plaintiff's motions for default are denied.

3 As Judge Chen noted, Plaintiff's complaint fails to state a
4 claim against Defendants and it must be dismissed. Plaintiff will
5 be given an opportunity to file an amended complaint against
6 Defendants to allege different causes of action against them, if he
7 truthfully can do so. If he chooses to do so, Plaintiff must file
8 an amended complaint within twenty days from the date of this
9 order. If Plaintiff fails to file the amended complaint within
10 this time, his case against the Randhawas will be dismissed for
11 failure to prosecute.

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13 IT IS SO ORDERED.

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15 Dated: 1/11/08



16 CLAUDIA WILKEN
17 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KHANNA et al,

Case Number: CV07-05136 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

RANDHAWA et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 11, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Padam Kumar Khanna
2600 10th Street, # 407
Berkeley, CA 94710

Dated: January 11, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California